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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 ELIZABETH R. TAPIA,

10 Plaintiff,

11 v.

12 MICHAEL J. ASTRUE, Commissioner of  
13 Social Security,

14 Defendant.

CASE NO. C09-5192 FDB

ORDER ADOPTING REPORT  
AND RECOMMENDATION  
AFFIRMING THE  
COMMISSIONER

15 The Magistrate Judge recommends that the Court should conclude that Elizabeth Tapia was  
16 properly denied social security benefits because application of the proper legal standard and  
17 substantial evidence support the Administrative Law Judge's (ALJ) finding that Plaintiff is not  
18 disabled. Plaintiff has filed objections to the Report and Recommendation.  
19

20 The Plaintiff argues that, (1) the ALJ improperly afforded the non-treating physician's  
21 opinion greater weight than that of the treating physician, (2) the ALJ failed to properly assess  
22 Plaintiff's mental impairments, and (3) the ALJ improperly assessed Plaintiff's credibility.  
23

**Evaluation of Medical Evidence**

24 As detailed by the Magistrate Judge, after reviewing all the medical evidence, including  
25 Plaintiff's medical records and the opinions of both treating and nontreating physicians, and  
26 Plaintiff's credibility, the ALJ determined Plaintiff was capable of performing a full range of

1 sedentary work. The ALJ explained that the record did not support the treating physician, Dr.  
2 Kriebel's assessment that Plaintiff was more severely limited. The ALJ pointed to evidence that  
3 showed plaintiff's activities were inconsistent with Dr. Kriebel's assessment and that the State  
4 Agency report, supported by the opinion of the nontreating physician, Dr. Hoskins, was the most  
5 consistent with the ALJ's review of the evidence. The Court agrees with the analysis of the  
6 Magistrate Judge.  
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### 8 **Assessment of Mental Impairments**

9 As detailed by the Magistrate Judge, like the physical impairments, the ALJ addressed the  
10 medical evidence related to Plaintiff's mental impairments in the context of the record as a  
11 whole. Although the ALJ did not summarize or note Dr. Lysak's opinion in her decision, the  
12 Magistrate Judge found no error in the determination because the ALJ's assessment of Plaintiff's  
13 mental impairments was consistent with Dr. Lysak's report. The ALJ found that plaintiff had  
14 severe mental impairments caused by affective disorder, including anxiety and post-traumatic  
15 stress disorder, a learning disorder, and substance abuse dependence. The ALJ discussed the  
16 severity of the mental limitations, finding that Plaintiff has moderate restrictions in her activities  
17 of daily living, Plaintiff has only mild difficulties in social functioning, Plaintiff has moderate  
18 difficulties with regard to concentration, persistence or pace, and Plaintiff has not experienced  
19 any episodes of decompensation. These findings are reflected and supported by Dr. Lysak's  
20 report.  
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23 The Court agrees with the Magistrate Judge that the ALJ properly weighed the  
24 conflicting evidence for the mental impairments and properly relied upon the evidence in the  
25 record to conclude that Plaintiff retained the ability to perform a range of sedentary work.  
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The Court is in agreement with the Magistrate Judge that the ALJ's decision was supported by independent reasons and is proper.

The Court, having reviewed Plaintiff's complaint, the Report and Recommendation of Judge J. Richard Creatura, United States Magistrate Judge, the objections to the Report and Recommendation, and the remaining record, does hereby find and ORDER:

- (1) The Court adopts the Report and Recommendation;
- (2) The administrative decision is AFFIRMED; and
- (3) The Clerk is directed to send copies of this Order to counsel of record.

DATED this 4<sup>th</sup> day of January, 2010.

FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE